THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.16158 of 2007

DATED:28.11.2007

Between:

S.Hemalatha, W/o.Late Sarapu Viswagna Brahamam,
and others .

.. PETITIONERS

versus

State Bank of Hyderabad,
Rep.by its Chief Manager,
Stressed Assets Management Branch,
4-1-358/1/ABC, Reddy Hostel Road, Ramkote,
Hyderabad – 500 001.

.. RESPONDENTS

THE HON'BLE SRI JUSTICE P.S.NARAYANA

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ORDER:

Heard Sri Ch.Srinivasa Raju, learned Counsel representing the writ petitioners and Sri K.V.Simhadri, learned Counsel representing the respondent Bank.

The Writ Petition is filed for a writ of mandamus declaring that the auction proceedings of the respondent Bank dated 27.02.2007 as illegal and ab initio void and to pass such other order or orders as this Court deems fit and proper in the circumstances of the case and in the interest of justice.

Sri Srinivasa Raju learned Counsel representing the writ petitioners had taken this Court through the affidavit filed in support of the Writ Petition and also the stand taken in the counter affidavit, and

would maintain that in the light of the facts and circumstances explained, since there are certain illegalities by virtue of non-following of the procedure, the Writ Petition to be allowed.

On the contrary, Sri Simhadri, learned Counsel representing the respondent Bank had taken this Court through the counter affidavit and would maintain that the procedure had been followed, and hence absolutely there is no illegality and there are no merits in the Writ Petition.

Heard both the Counsel.

The first petitioner has sworn to the affidavit filed in support of the writ petition. It is stated that the petitioners filed an appeal under Section 17 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (the Act, for brevity), vide I.R.No.113 of 2007, dated 26.07.2007, and sought for setting aside of the auction proceedings of the respondent Bank dated 27.02.2007 and also sought for stay of all further proceedings consequent to the auction proceedings. It is also submitted that when the petitioners approached the Debt Recovery Tribunal, Hyderabad, with the above said appeal seeking urgent orders, they came to know that the regular post of the Presiding Officer is vacant and acting Officio/Incharge was on leave, and therefore, their application could not be heard by the said Tribunal to pass the urgent orders. As there is no other alternative, they approached this Court after exhausting the statutory remedy. It is further stated that it is appropriate to mention the brief facts of the case for better appreciation of this Court. It is stated that the first petitioner is the widow of Late S.Brahamam, petitioners 2 to 4 are their minor children, and late S.V.Anusuya is the mother-in-law of the first petitioner and grandmother of petitioners 2 to 4. It is also submitted that Late S.Brahamam was the absolute owner of the land

admeasuring 468 square yards in Plot No.6 in Block-1, Ward No.1, of Nizamabad, and late S.V.Anusuya is the owner of the land admeasuring 200 square yards in Plot No.204 and 200 square yards in Plot No.41 in Survey No.440, situated at Pangra Village, Nizamabad District. After their demise the applicants have acquired the properties as legal heirs of the deceased and are enjoying the same till date with absolute possession as the lawful owners of the said properties. It is further submitted that on 16.07.2007 the applicants came to know that recently some third parties approached the schedule properties and claimed that they have purchased the schedule properties in an auction conducted by the respondent bank on 27.02.2007. The petitioners were shocked to know these claims. On enquiries the petitioners came to know that the State Bank of Hyderabad, Kamareddy, Nizamabad, filed O.A.No.321 of 2001 on the file of Debts Recovery Tribunal, Hyderabad, for recovery of a sum of Rs.54,78,440.30 with interest from 28.08.2000 and the same is pending. While so the respondent Bank claimed that they have initiated recovery proceedings under the Act. But the petitioners were not issued with any of the notices even of the demand or attachment or even of the auction proceedings dated 27.02.2007 much less in the O.A. The respondent Bank Officials in collusion with some third parties and other defendants of the above said O.A. purposefully initiated the auction proceedings against the petitioners only, leaving huge properties which are sufficient to satisfy the entire so called liability of the respondent Bank, only with an intention to safe guard the personal interest of some officials of the respondent Bank and of defendants of the O.A. It is also stated that Late S.Brahamam had never executed any document or created mortgage in favour of the State Bank of Hyderabad, Nizamabad Branch or even stood as

guarantor for the loan sanctioned to M/s.Vijetha Polymers Private Limited, the late Brahamam or the petitioners are not aware of the sanction of the loan, disbursement and enhancement of the loan or the default by the said Company. Even presuming that the documents said to have been executed in favour of the State Bank of Hyderabad, Nizamabad Branch, as claimed in O.A.No.321 of 2001, Late S.Brahamam was a party to the guarantee agreement dated 08.06.1996, he expired on 11.08.1997 and he never signed any revival letter as claimed by the Bank, and therefore, the claim is barred by limitation even by the date of claim application i.e., O.A. filing dated 28.08.2000. And therefore there is no valid and enforceable debt or the liability of the petitioners or of late S.Brahamam and Late S.V.Anusuya to enforce the rights of the respondent Bank against the petitioners' properties. It is further submitted that, now the respondent Bank is claiming as a separate entity formed under the Act which will not give any fresh cause of action against the petitioners for proceeding against the properties which they have acquired as legal heirs of deceased. As the claim itself is barred by limitation, initiating proceedings under the Act for recovery of the so called due amounts from the petitioners and further conducting auction for their properties is *ab initio* void. It is submitted that the first petitioner is working as Teacher in Saraswathi Sishu Mandir school at Kamareddy, Nizamabad District for a salary of Rs.1380/- per month and petitioners 2 to 4 are minor children. They are residing in Kamareddy, Nizamabad District, ever since from the year 1997. The petitioners have not received any notices of demand, claiming possession of the property or auction proceedings either of the O.A or the Act proceedings. If the petitioners were issued with any notice they could have taken steps accordingly and also to safe guard their interest. It is

also submitted that even if it is presumed that the properties were mortgaged in favour of the respondent Bank, the claim of the respondent Bank is hopelessly barred by limitation and on that ground alone without going into the merits of the case it can be decided that the respondent Bank has no claim against the petitioners and against the above properties. Therefore, the auction proceedings of the respondent Bank dated 27.02.2007 against the above petitioners' properties have to be set aside. In such circumstances, being left with no other option, the writ petitioners approached this Court praying for appropriate relief.

The respondent Bank filed counter affidavit and also placed before this Court the notice issued by the Bank under Section 13(4) of the Act and the Rules made thereunder; Telugu paper publication for auction sale dated 28.02.2007 in Andhra Jyothi Daily Newspaper; English paper publication for auction sale dated 28.02.2007 in the New Indian Express, and the Certified copy of Registered Certificate of Sale (for immovable property) vide Doc.No.5916/2007, dated 28.05.2007.

In the counter affidavit filed it is stated that the Writ Petition is not maintainable in the light of the alternative remedy available under Section 17 of the Act. It is also averred that the allegation that an appeal under Section 17 of the Act has been filed by the petitioners seeking to set aside the orders dated 27.02.2007 and because of the non-availability of the regular Presiding Officer, the appeal could not be taken up by the Debt Recovery Tribunal, and therefore, the petitioners approached this Court after exhausting the statutory remedy is incorrect. It is stated that in fact the auction sale was conducted on 30.03.2007 by the respondent and the property was sold after thoroughly following the procedure laid down under the Act and after

issuing notice under Section 13(2) of the Act and therefore, the petitioners should have filed an application, if they were so aggrieved within 45 days from the date on which the measures had been taken under the Act before the Debts Recovery Tribunal. Further it is stated that Sri S.Brahamam was the guarantor for the loans obtained by M/s.Vijetha Polymers Private Limited during his life time and he also offered the personal properties as guarantee to the Banks. As the guarantee was obtained, auction seeking renewal letter does not arise unless specifically revoked by the guarantor. The amounts since not paid by the borrower, M/s.Vijetha Polymerrs Private Limited, a Substantial O.A.No.321 of 2001 was filed before the Debts Recovery Tribunal, A.P., Hyderabad, against the company and all the guarantors including the petitioners who are Legal heirs of late S.Brahamam for recovery of Rs.54,78,440/- together with interest at the rate of 15.75% per annum with quarterly rests from the date of filing till realization in terms of Recovery of the Debts Due to Banks and Financial Institutions Act, 1993. The petitioners herein are shown as defendants 16 to 18 in the said O.A and they are very much contesting. By advent of the Act, the respondent Bank had invoked Section 13(2) of the Act by issuing notice dated 12.03.2003 to all the guarantors by registered post with acknowledgment due, for recovery of the amount of Rs.54,83,046/- as on 29.08.2000 along with other charges. However, there was no reply for the said notice within 60 days. The Bank again published the notice in newspaper on 17.06.2003, but no response was received. This has constrained the Bank to issue the Possession notice under section 13(4) of the Act dated 11.10.2003 and publication of the said notice in the newspaper on 14.10.2003 and finally the sale notice was issued on 17.02.2007 and auction notice was published in Andhra Jyothi and Indian Express on 28.02.2007 in accordance with law and

thereafter auction was conducted on 30.03.2007 and sale certificate was issued on 14.05.2007 and registered with the District Registrar, Nizamabad on 28.05.2007. In view of the above, the allegation that the petitioners came to know on 16.07.2007 regarding the auction conducted and that no notice was issued including the Auction proceedings etc., is totally untenable. There is no bar in initiating proceedings under the Act simultaneously, even when the application is pending before the Debts Recovery Tribunal as held by the Supreme Court in its recent judgments in the case of Transcore. The allegation that the respondent officials in collusion with the third parties initiated auction proceedings leaving huge amounts sufficient to satisfy the liability of the Bank are all totally incorrect and false. It is also further stated that there are no documents created or executed in favour of the Bank at its Nizamabad Branch or stood as Guarantor to the loan sanctioned is also equally untenable and incorrect. Late Sri Brahamam created a personal guarantee to the borrower for securing the loan from the Branch at Kamareddy but not from Nizamabad Branch as alleged. Therefore, the allegation that sanctioning of loan, disbursement, enhancement etc., is unaware is totally not correct as the O.A.No.321 of 2001 was filed by Kamareddy Branch, Nizamabad District. Since the guarantor late Sri Brahamam expired, the legal heirs were shown as defendants 16 to 19 in the O.A.No.321 of 2001 and the question of time barred to file O.A.No.321 of 2001 by 28.08.2000 cannot be gone into as the same is not the subject matter of this writ petition, and as the O.A.No.321 of 2001 is pending before the Debts Recovery Tribunal, in which the petitioners are parties, it is open to them to raise all the pleas available therein. The further allegation that under the Act, no fresh action for proceeding against the properties of the petitioners etc., is not maintainable and incorrect, as

the simultaneous proceeds are not barred under the Act. Further it has been averred in paragraphs 7, 8 and 9 of the counter affidavit that the procedure had been followed. These are the stands taken by the parties.

In the light of the respective stands taken by the parties, even if the averments made in the affidavit filed in support of the writ petition to be taken into consideration, this remedy by way of writ petition definitely is a misconceived remedy. The petitioners are at liberty to pursue the other remedies in accordance with the law. Except giving this liberty, no other relief can be granted in the present writ petition.

Subject to the above observation, this Writ Petition is hereby dismissed. There shall be no order as to costs.

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(P.S.NARAYANA, J)

Dated:28.11.2007
vs